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UNITED STATES DEPARTMENT OF COMMERCE
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101

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/287,377 04/07/99 D'AMATO R 05213-0272

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EXAMINER

JONES, D

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

9
01/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/287,377

Applicant(s)

D'Amato

Examiner

Dwayne C. Jones

Group Art Unit

1614



☒ Responsive to communication(s) filed on the election of 19 OCT 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) 13-20 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 13-20 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1614

DETAILED ACTION

Status of Claims

1. Claims 1-12 are pending.
2. Claims 1-12 are rejected.
3. Claims 13-20 are drawn to a non-elected invention and are withdrawn from further consideration.

Election/Restriction

4. Applicant's election with traverse of the restriction of groups I and II cited in Paper No. 8, filed on October 19, 2000, is acknowledged. The traversal is on the ground(s) that the two groups are not independent and distinct. This is not found persuasive because the claims can be practiced with another materially different product such as with interferon..

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

5. The information disclosure statement filed January 28, 2000 has been received and considered, see enclosed copy of PTO FORM 1449.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nguyen et al. Nguyen et al. teach of the composition of pentosan polysulfate and hydrocortisone in treating angiogenesis, (see abstract).

8. Claims 1 and 5-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Willoughby et al. of WO 94/23725. Willoughby et al. teach of the composition of hyaluronic acid and a non-steroidal anti-inflammatory agent, (see abstract and page 7, lined 33 to 38).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

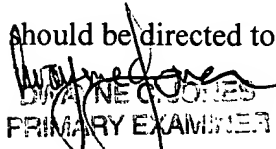
11. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willoughby et al. of WO 94/23725 in view of Colville-Nash et al. Willoughby et al. teach of the composition of hyaluronic acid and a non-steroidal anti-inflammatory agent, (see abstract and page 7, lined 33 to 38). The prior art reference of Colville-Nash et al. teach that the administration of steroids, such as cortisone and dexamethasone, are shown to modulate angiogenesis, (see abstract). "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. . . . [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (703) 308-4634. The examiner can normally be reached on Mondays through Fridays from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Mondays.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


DWAYNE G. JONES
PRIMARY EXAMINER

Tech. Ctr. 1614

December 28, 2000